



FEDERAL MARITIME COMMISSION

46 CFR Parts 501 and 540

Docket No. 11- 16

RIN: 3072-AC45

**Passenger Vessel Operator Financial Responsibility Requirements For Non-
Performance Of Transportation**

AGENCY: Federal Maritime Commission.

ACTION: Proposed Rule: Request for Additional Comments and Information

SUMMARY: The Federal Maritime Commission requests additional comments and information in order to assist the Commission's determination whether passenger vessel operators may be deemed "small entities" under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act).

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: Address all comments concerning this proposed rule to:

Karen V. Gregory, Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
Phone: (202) 523-5725
Email: secretary@fmc.gov

FOR FURTHER INFORMATION CONTACT:

Vern W. Hill, Director
Bureau of Certification and Licensing
800 North Capitol Street, N.W.
Washington, D.C. 20573-0001
Phone: (202) 523-5787 Email: bcl@fmc.gov

SUPPLEMENTARY INFORMATION:

Submit Comments:

Non-confidential Comments and Information. For non-confidential comments submit an original and five (5) paper copies, and if possible, send a PDF of the document by email to secretary@fmc.gov. Include in the subject line: Docket No. 11-16 and [Company/Individual Name].

Confidential Comments and Information. Confidential filings must be submitted in the traditional manner on paper, rather than by email. Comments and information that are submitted for confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as “confidential” and describes the nature and extent of the confidential treatment requested. Responses to this Request that contain confidential information must consist of (1) the complete filing and (2) be marked by the filer as “Confidential-Restricted,” with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, “confidential materials excluded.” The Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality.

Questions regarding filing or treatment of confidential responses to this NPRM should be directed to the Commission’s Secretary, Karen V. Gregory, at the telephone number or email provided above.

Discussion:

On September 13, 2011, the Commission issued its Notice of Proposed Rulemaking (NPRM) to update its financial responsibility requirements for nonperformance of passenger vessel service by passenger vessel operators that are subject to section 3 of Public Law 89-777, 46 U.S.C. 44101-44106. The NPRM was published in the Federal Register on September 20, 2011. 76 FR 58227 - 58236.

In the NPRM, the Commission relied upon the rebuttable presumption established in 2003¹ that PVOs are generally large companies with more than 500 employees and noted that there are no PVO small entities that would be affected by the proposed rule. NPRM, p. 12. In addition, the Commission also provided the factual basis under the Regulatory Flexibility Act (RFA),² as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),³ for the Chairman's certification that the rule will not have a significant economic impact on a substantial number of small entities. It was noted that the proposed rule could result in significant reductions in the cost of financial responsibility coverage because of the use of alternative coverage options. However, the public was requested to comment on the certification and its underlying assumptions.⁴

American Cruise Lines, Inc. (ACL) requests in its comments that the Commission treat it as a small entity under the RFA and SBREFA. ACL informed the Commission that it has less than 500 employees, which is the maximum number a PVO can employ

¹ See, *FMC Policy and Procedures Regarding Proper Consideration of Small Entities in Rulemakings* (February 7, 2003). (Commission SBREFA Policy). See, http://www.fmc.gov/assets/1/Page/SBREFA_Guidelines_2003.pdf.

² Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (codified at 5 U.S.C. 601 et seq.).

³ Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857.

⁴ The Commission SBREFA Policy also encourages small PVOs to "submit a request for such treatment., along with payroll . . . evidence. . . , to substantiate its claim and rebut the presumption." SBREFA Policy, p. 4.

and be considered a small entity under SBA's current size standards.⁵ ACL Comments, pp. 2-3. The Passenger Vessel Association (PVA) similarly asserts that four of its members would qualify as small entities under RFA and SBREFA and that a "good faith analysis" under those statutes should be made. PVA Comments, p. 3. In view of these comments, the Commission seeks additional information relevant to the Commission's analysis whether there will be significant economic impacts on a substantial number of small entities.

In its SBREFA Policy, the Commission adopted the small business size standards established by the Small Business Administration that are matched to industry classifications in the North American Industry Classification System (NAICS).⁶ The Commission specifically identified industry code and title: 483112 - Deep Sea Passenger Transportation. However, two additional code classifications in the NAICS may apply to passenger vessel operators: 483114 - Coastal and Great Lakes Passenger Transportation; and, 483212 Inland Water Passenger Transportation. For each of these three code classifications, the same size standard applies. In other words, a PVO may have no more than 500 employees in order to be considered a small entity.

In order to determine the number and extent to which small entity PVOs may be affected by the proposed rule, the Commission invites response from all PVOs as to the number of employees employed by their companies.⁷ The employee data sought

⁵ See http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.

⁶ SBREFA Policy, at p.3.

⁷ SBA regulations establish principles relative to the calculation of a business' total number of employees. For example "the average number of employees of the concern is used . . .based upon the numbers of employees for each of the pay periods for the preceding completed 12 calendar months." 13 CFR 121.106(b).

includes full time and temporary employees, and the number of employees of each PVO's foreign and domestic affiliates.

In addition, the Commission's threshold analysis under RFA and SBREFA also involves estimating:

- The economic impacts upon those entities,
- Whether those impacts are significant (including whether such entities would be placed at a competitive disadvantage relative to larger entities), and
- Whether such effects will fall upon a substantial number of small entities.

In pursuing this analysis, the Commission needs information from large and small PVOs. The questions set forth below seek information related to: each PVO's estimated cost of compliance with the proposed rule; the company's total revenues, expenses and earnings; the average revenue per passenger; the number of passengers embarked at U.S. and foreign ports; and identification of direct competitors in the United States cruise markets in which the PVO is currently operating.

In view of the foregoing, the Commission requests written comments and responses to the following questions by interested parties, including those that previously filed comments in response to the proposed rulemaking.⁸

⁸ Comments were received from Congressman Andy Harris, M.D. (Maryland), The Surety & Fidelity Association of America, Lindblad Expeditions, Inc., Royal Caribbean Cruises Ltd., National Association of Surety Bond Producers, Cruise Lines International Association, Inc., American Cruise Lines, Inc., Passenger Vessel Association, Carnival Corporation & plc.

QUESTIONS

1. Please detail your estimated cost of compliance with the proposed rule's requirements pertaining to financial responsibility for nonperformance of passenger vessel transportation (i.e., premiums and fees by sureties; collateral required by credit card issuers; other costs):
 - a) Based on current operations and costs for the past year (2011).
 - b) Your estimated cost of compliance if alternative forms of protections as contained in the proposed rule are available.
2. Will the nonperformance requirements in the proposed rule change your type of coverage? If so, explain how.
3. How will the proposed changes to the requirements affect your continuing operations?
4. Estimated number of your company's staff hours required to comply with proposed changes to the application form (Form 131).
5. Estimated number of your company's staff hours required to comply with proposed changes to Unearned Passenger Revenue (UPR) reports.
6. What was your total revenue in 2011? These figures should reflect revenues obtained from all sources (not just from cruises under the Commission's program).
7. What were your total expenses in 2011? These figures should reflect expenditures incurred by all activities (not just by cruises under the Commission's program).
8. What were your earnings after taxes in 2011? These figures should reflect earnings after taxes from all operations (not just operations conducted under the Commission's program).
9. Please provide the following information regarding the number of employees your company employed in the most recent 12 calendar months (include any domestic and/or foreign affiliates in calculating number of employees):
 - a) Full-time, permanent employees (head-count).
 - b) Part-time, permanent employees (head-count and full-time equivalents).
 - c) Full-time, seasonal or temporary employees (head-count).

- d) Part-time, seasonal or temporary employees (head-count and full-time equivalents).
 - e) Staff obtained from temporary employment agencies (head-count and full-time equivalents). Do not include these totals in (a) through (d) above.
 - f) Staff obtained from professional employee organizations (head-count and full-time equivalents). Do not include these totals in (a) through (d) above.
10. Which passenger vessel operators (brand(s)) do you consider your closest competitor(s) in US-based markets?
11. What was the average revenue generated by each passenger who embarked on your US-based cruises in 2011?
12. How many passengers did you embark in 2011 at:
- a) US ports
 - b) Non-US ports
13. Please provide any other comments or information that you believe would assist the Commission in analyzing the economic or competitive impact of the proposed rule in this proceeding.

By the Commission.

Karen V. Gregory
Secretary

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